Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Message Text

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PAGE 01 STATE 167931
ORIGIN PM-05

INFO OCT-01 EUR-12 SOE-02 ISO-00 L-03 DLOS-09 OES-07
ICAE-00 NSCE-00 SSO-00 INRE-00 CIAE-00 H-01
INR-10 NSAE-00 PA-01 SP-02 SS-15 ACDA-12 OMB-01
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CINCLANTFLT NORFOLK IMMEDIATE

S E C R E T STATE 167931

AMEMBASSY, NOFORN

E.O. 11652: GDS

TAGS: MNUC, OCLR, US, FR

SUBJECT: POTENTIAL NPW PROBLEM

REF: A) US DAO PARIS 20907 (DTG 301700Z JUNE 78) PASEP;
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PAGE 02 STATE 167931

B) EMBASSY PARIS 20705 (DTG 281548Z JUNE 78) NOTAL;C) CTG
ONE THREE SEVEN PT SIX 272020Z JUNE 78) NOTAL

1. SUMMARY. WE ARE PLEASED THAT MEETING OF ALUSNA AND
VADM ACCARY REPORTED REFTEL A INDICATES FRENCH NAVY DOES
NOT INTEND TO OBJECT TO A SOUTHBOUND PASSAGE OF NIMITZ
USING THE TRANSIT LANE. THEREFORE WE BELIEVE NO FURTHER

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

CONTACT IS REQUIRED WITH FRENCH NAVY AT THIS TIME. BUT SINCE THE COMPLEX ISSUES INVOLVED WILL CONTINUE TO BE MATTERS OF DISCUSSION, THE FOLLOWING DEPARTMENT AND DEFENSE VIEWS ON FRENCH ALLEGATIONS REGARDING USS NIMITZ NORTHBOUND TRANSIT ARE PROVIDED. END SUMMARY.

2. WITH RESPECT TO THE FRENCH ALLEGATION THAT USS NIMITZ VIOLATED REGULATIONS FOR NAVIGATION IN THE VICITY OF USHANT ISLAND, THE FOLLOWING COMMENTS ARE GERMANE:

A. THE TRAFFIC SEPARATION SCHEME (TSS) NORTHWEST OF USHANT ISLAND AND THE INSHORE TRAFFIC ZONE BETWEEN THE TSS AND USHANT ISLAND ARE RECOGNIZED BY IMCO.

B. IN ACCORDANCE WITH RULE 10 OF COLREGS 72, USN VESSELS TRANSITTING THIS AREA SHOULD UTILIZE THIS TSS, OR AVOID IT BY A WIDE MARGIN, AND REMAIN CLEAR OF THE INSHORE TRAFFIC ZONE.

C. FROM ROUGH PLOT OF DATA IN PARA 2 REFTEL C, NIMITZ WAS OUTSIDE THE APPROPRIATE TSS LANE, AND THEREFORE WITHIN AN INSHORE TRAFFIC ZONE, FOR A PERIOD OF ABOUT 15 MINUTES AND A DISTANCE ALONG ITS TRACK OF APPROXIMATELY 5 MILES.

D. THE PROHIBITION ON USE OF THE INSHORE TRAFFIC ZONE BY
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ALL VESSELS, OTHER THAN THOSE LISTED IN HYDROLANT 296/78 DR 308/78 IS A UNILATERAL GOF ACTION. TO THE BEST OF OUR KNOWLEDGE THIS SUPPLEMENTAL RULE HAS BEEN PROPOSED TO BUT NOT REPEAT NOT ADOPTED BY IMCO. WHILE THE US ACKNOWLEDGES THE RIGHT OF A COASTAL STATE UNDER THE 1958 CONVENTION ON THE TERRITORIAL SEA TO INVOKE A TEMPORARY RESTRICTION WITHIN ITS TERRITORIAL WATERS, THE PROHIBITION OF FOREIGN VESSEL TRAFFIC IN THE INSHORE TRAFFIC ZONE PROPOSED BY GOF DOES NOT APPEAR TO BE BASED ON REASONS OF SECURITY AND THEREFORE WOULD APPEAR TO BE INCONSISTENT WITH THE 1958 CONVENTION. IN ANY EVENT, NIMITZ WAS OUTSIDE THE LIMITS OF FRENCH TERRITORIAL WATERS RECOGNIZED BY THE USG.

3. WITH RESPECT TO THE FRENCH PROTEST OF A US NPW OPERATING WITHIN ITS CLAIMED 12 MILE TERRITORIAL SEA IN VIOLATION OF FRENCH LAW, THE HISTORICAL BACKGROUND AND CONCURRENT US POSITION ARE AS FOLLOWS:

A. FRENCH LAW NO 65-956 OF NOVEMBER 12, 1965 "ON THE LIABILITY OF OPERATORS OF NUCLEAR SHIPS" DOES NOT DIFFERENTIATE BETWEEN WARSHIPS OR COMMERCIAL NUCLEAR

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

POWERED VESSELS, AND STATES IN ART 22 THAT A "FOREIGN NUCLEAR SHIP MAY BE REFUSED ACCESS TO FRENCH TERRITORIAL WATERS, INTERNAL WATERS AND PORTS..." DECREE NO 69-690 OF JUNE 19, 1969 IMPLEMENTED ART 22 OF THE 1965 LAW BY STATING THAT ENTRANCE OF ANY FOREIGN NUCLEAR POWERED SHIP INTO FRENCH TERRITORIAL WATERS, INTERNAL WATERS OR PORT REQUIRED AUTHORIZATION FROM THE MINISTER OF FOREIGN AFFAIRS. THIS LAW AND IMPLEMENTING DECREE CAUSED THE SUSPENSION OF US NPW VISITS TO FRENCH PORTS. THE PROVISION OF THE LAW REGARDING NPW IN THE CLAIMED TERRITORIAL SEA HAS NEVER BEEN RECOGNIZED BY THE US.

, IN DEC 1971, GOF ENACTED LEGISLATION EXTENDING ITS CLAIMED TERRITORIAL SEA TO 12 MILES. ON 31 JAN 72,

EMBASSY DELIVERED DIPLOMATIC NOTE 22 TO GOF WHICH STATED, INTER ALIA, THAT THE US DID NOT CONSIDER ITSELF OBLIGATED UNDER INTERNATIONAL LAW TO RECOGNIZE TERRITORIAL SEA CLAIMS IN EXCESS OF 3 MILES, AND RESERVED ITS RIGHTS AND THOSE ITS NATIONALS IN THE AREA BEYOND A 3 MILE TERRITORIAL SEA.

C. NEITHER THE 1958 CONVENTION ON THE TERRITORIAL SEA NOR THE 1975 INTERNATIONAL CONVENTION ON INTERVENTION ON THE HIGH SEAS PROVIDES A LEGAL BASIS FOR A FRENCH RESTRICTION ON INNOCENT PASSAGE OF A PARTICULAR CLASS OF VESSEL BY VIRTUE OF ITS PROPULSION MODE. THE USG EXPRESSLY REJECTS THE LEGITIMACY OF SUCH A CLAIM BY A COASTAL STATE UNDER CURRENT INTERNATIONAL LAW. THE USG CANNOT TOLERATE SUCH A LIMITATION ON THE FREEDOM OF OPERATION OF WARSHIPS WHICH TODAY CONSTITUTE ONE THIRD OF THE MAJOR COMBATANT VESSELS OF THE USN. AS AN NPW OPERATING STATE, THE GOF SHOULD RECOGNIZE THAT SUCH A POSITION MAY BE INIMICAL TO ITS OWN NATIONAL SECURITY INTERESTS.

D. AT THIS TIME, IN THE ABSENCE OF AN LOS TREATY, THE US MAINTAINS ITS TRADITIONAL POSITION THAT IT IS NOT OBLIGED UNDER INTERNATIONAL LAW TO RECOGNIZE TERRITORIAL SEA CLAIMS IN EXCESS OF 3 NM. IN THIS REGARD, WE DO NOT RECOGNIZE THE FRENCH CLAIM TO THE EXTENT IT EXCEEDS 3 NM. FURTHER, WE DO NOT RECOGNIZE THE RIGHT TO PROHIBIT INNOCENT PASSAGE OF ANY WARSHIP. THE INTRODUCTORY REMARKS IN SECTION III OF NOTICE TO MARINERS 44/77 MAKES CLEAR THAT THE LIST OF NATIONAL CLAIMS OF MARITIME JURISDICTION CONTAINED THEREIN IN NO WAY CONSTITUTES A LEGAL RECOGNITION BY THE US.

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

4. THE CONCERNS EXPRESSED IN REFTEL B ARE ACKNOWLEDGED. HOWEVER, IN ORDER CONSISTENTLY TO EXERCISE OUR FREEDOM OF OPERATION ON THE HIGH SEAS IN SUPPORT OF INTERNATIONAL LAW AND THE US LOS POSITION, WE CANNOT ACQUIESCE IN THE FRENCH POSITION. IF NEED ARISES FOR FURTHER DISCUSSION, AND SUBJECT TO THE AMBASSADOR'S CONCURRENCE, THE NAVAL ATTACHE WILL BE DIRECTED TO INFORM THE FRENCH NAVY THAT FOLLOWING THE PRACTICE OF PRUDENT SEAMEN, THE ATTACHE WOULD EXPECT US VESSELS TO USE THE APPROPRIATE LANES OF THE TSS ON ALL TRANSITS.

5. THE NAVAL ATTACHE WOULD RESPOND TO THIS ISSUE OF REMAINING MORE THAN 12 MILES FROM FRANCE ONLY IF ASKED. IN THAT CASE HE WOULD POINT OUT THAT PORTIONS OF THE TSS

LIE WITHIN 12 MILES OF LAND. IF PRESSED ON THE ISSUE OF THE 1965 FRENCH LAW/1969 DECREE, THE ATTACHE WOULD BE FORCED TO REMIND THE FRENCH NAVY THAT THE USG RECOGNIZES TERRITORIAL SEA CLAIMS OF ONLY 3 MILES AND, IN ANY CASE, DOES NOT RECOGNIZE THE RIGHT OF THE GOF TO REQUIRE NPW INTENDING TO EXERCISE THE INTERNATIONALLY RECOGNIZED RIGHT OF INNOCENT PASSAGE.

6. CONCUR WITH EMBASSY ASSESSMENT THAT OFFICIAL GOF CONCERN MAY NOT BE EXPRESSED. SHOULD EMBASSY RECEIVE QUESTIONS FROM GOF REGARDING THIS SITUATION, YOU SHOULD DRAW ON THE PRINCIPLES CONTAINED HEREIN IN STATING THE USG POSITION.

FYI. IF OUR SHIPS WERE NOT TO FOLLOW THE TSS LANES, THE NORMAL ROUTE OF PASSAGE, IT COULD BE PERCEIVED BY THE GOF THAT THE US WAS ACQUIESCING TO THEIR CLAIM. END FY1.

7. THIS MESSAGE HAS BEEN COORDINATED WITH DEFENSE. VANCE

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Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Message Attributes

Automatic Decaptioning: X
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Draft Date: 01 jul 1978
Decaption Date: 01 jan 1960
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Disposition Approved on Date:
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Secure: OPEN
Status: NATIVE
Subject: POTENTIAL NPW PROBLEM
TAGS: MNUC, OCLR, US, FR
To: PARIS
Type: TE
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20 Mar 2014
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